APPENDIX

MEMORANDUM

MINUTE ENTRY
SEAR, J.
July 6, 1993

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

Civil Action No. 87-4068
SECTION "G"

JAN HARMS, *et al.*

versus

CAVENHAM FOREST INDUSTRIES, *et al.*

MEMORANDUM AND ORDER

[Filed July 6, 1993]

The Final Judgment in this case reserved determination of attorneys' fees and court costs until the completion of the appellate process. The Fifth Circuit Court of Appeals filed its opinion affirming that judgment. *See Harms v. Cavenham Forest Indus. Inc.*, 984 F.2d 686 (5th Cir. 1993). The parties were thereafter ordered to submit briefs on the issue of costs and fees.

Analysis:

Section 502(g)(1) of the Employee Retirement Income Security Act ("ERISA") allows a court to use its discretion to award reasonable court costs and attorneys' fees to a party for its successful ERISA claims. *See* 29 U.S.C. § 1132(g)(1).

A. *Attorneys' Fees*:

In *Iron Workers Local No. 272 v. Bowen*, 624 F.2d 1255 (5th Cir. 1980), the Fifth Circuit outlined five factors that should be considered in deciding whether to award attorneys' fees:

> (1) the degree of the opposing parties' culpability or bad faith; (2) the ability of the opposing parties to satisfy an award of attorney's fees; (3) whether an award of attorneys' fees against the opposing parties would deter other persons acting under similar circumstances; (4) whether the parties requesting attorneys' fees sought to benefit all participants and beneficiaries of an ERISA plan or to resolve a significant legal question regarding ERISA itself; and (5) the relative merits of the parties' positions. No one of these factors is necessarily decisive, and some may not be apropos in a given case, but together they are the nuclei of concerns that a court should address in applying section 502(g).

Id. at 1266; *see also Harms v. Cavenham Forest Indus. Inc.*, No. 92-3321, April 7, 1993 (applying *Bowen* factors in refusing award of attorneys fees on appeal).

Plaintiffs vigorously claim that defendants acted in bad faith. However, this case turned on the interpretation of certain benefit plans. The sections of the plans being litigated did not contain "unambiguous provisions" [1] which "unambiguously supported" [2] any one result, as plaintiffs claim. For example, although my findings were affirmed by the Fifth Circuit, the Fifth Circuit used an analysis different from mine to reach the same result that I did. *See Harms*, 984 F.2d at 692 (Fifth Circuit noted that its analysis differed from that used by the district court but that the result was the same). The fact that defendants adopted and argued different interpretations of the plans

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[1] Plaintiff's Brief, at 6.

[2] Plaintiff's Brief, at 14.

than did plaintiffs does not lead to the conclusion that defendants acted with bad faith.

Turning to *Bowen* factor two, it is likely that defendants would be capable of satisfying an award of attorneys' fees. However, factor three's question of whether such an award would deter others acting under *similar circumstances* speaks against the award. Because this case involved the interpretation of individualized benefits plans, it is unlikely that any similar circumstances will arise in the future. Similarly, the fact-specific nature of the inquiry involved in this case precludes a finding under the fourth factor that a significant ERISA legal question was resolved. Furthermore, because plaintiffs brought this action to benefit themselves rather than a class of beneficiaries under the plan,[3] they do not satisfy factor four's question of whether they sought to benefit *all* participants and beneficiaries under the plan.

Finally, *Bowen*'s fifth factor inquires into the relative merits of the parties' position. In this case, both parties were seeking something to which they were not entitled. Plaintiffs' attempt to obtain severance benefits from both defendant Crown Zellerbach and defendant Cavenham Forest Industries was found by the Fifth Circuit to be a request for "a double-recovery windfall—a result abhorred by ERISA." *Harms*, 984 F.2d at 693. In contrast, defendants' claim that plaintiffs were not eligible for retirement benefits under Supplement C of the plan was resolved in favor of plaintiffs. Neither party's claim was significantly more meritorious than the other's.

Following consideration of the *Bowen* factors and all other facts relevant to this inquiry, I find that plaintiffs are not entitled to an award of attorneys' fees.

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[3] *See* Complaint and Demand for Jury Trial, filed August 31, 1987.

B. *Court Costs*:

The Federal Rules of Civil Procedure provide:

> Except when express provision therefor is made in a statute of the United States or in these rules, costs shall be allowed *as of course to the prevailing party* unless the Court otherwise directs.

See Fed. R. Civ. P. 54(b) (emphasis added). Furthermore, the Fifth Circuit recognizes a strong presumption in favor of awarding court costs to the prevailing party. *See Sheets v. Yamaha Motors Corp., U.S.A.*, 891 F.2d 533 (5th Cir. 1990). Plaintiffs were forced to initiate this action in order to recover the retirement benefits that defendants were legally required to pay them. Plaintiffs are therefore entitled to have their court costs taxed against defendants.

Accordingly,

IT IS ORDERED that plaintiffs' claim for attorneys' fees is DENIED.

IT IS FURTHER ORDERED that plaintiffs' claim for court costs is GRANTED and plaintiffs' court costs are taxed against defendants.

/s/ Peter Beer
for Morey L. Sear
United States District Judge